



EB-2014-0022

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Suncor
Energy Products Inc. for an Order granting leave to
construct a new transmission line and associated facilities.

PROCEDURAL ORDER NO.2

May 16, 2014

Suncor Energy Products Inc., ("Suncor") filed an application (the "Application") with the Ontario Energy Board (the "Board"), dated January 21, 2014 under sections 92, 96(2), 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B.

Suncor has applied for an order of the Board for leave to construct approximately 15 kilometres of 115 kilovolt electricity transmission line and associated facilities (the "Transmission Facilities") to connect Suncor's Cedar Point II Wind Energy Project to the IESO-controlled grid. Suncor is also seeking an order approving the forms of agreements with landowners and an order approving the construction of certain transmission facilities upon, under or over a highway, utility line or ditch.

The Board issued a Notice of Application and Written Hearing on February 18, 2014. In response to the Notice, the following parties requested and were granted intervenor status: Hydro One Networks Inc. (HONI), the Independent Electricity System Operator ("IESO"), Lambton County (the "County") and two local resident groups, namely the Concerned Seniors Group and We're Against Industrial Turbines (WAIT-PW). On March 25, 2014, the Board issued Procedural Order No. 1 in which it outlined the schedule for the submission of interrogatories and responses.

Consolidation of the Two Local Resident Groups

In email correspondence sent on March 28, 2014, Mr. Santo Giorno, representative for the Concerned Seniors Group, noted synergies between his group and WAIT-PW and proposed that the two be merged as WAIT-PW. The two groups have since filed a common set of interrogatories, as well as other correspondence.

The Board recognizes the consolidation of the two resident groups as WAIT-PW. The Board understands that Mr. Giorno and Ms. Bellavance will be the contacts. The Board expects a single common set of cost claims to be filed at the conclusion of the proceeding, including for costs incurred prior to this merger.

An amended intervenors' list is attached as Appendix A to this Order.

Form of Hearing

Suncor asked in its Application that the Board proceed by way of a written hearing. Procedural Order No.1 requested that parties who object to a written hearing inform the Board in writing and provide reasons as to why an oral hearing would be necessary.

On March 27, 2014, the County filed a request for an oral hearing in which it noted that it was engaged in negotiations with Suncor in respect of a potential road-use agreement. The County submitted that should it not be able to reach an agreement, "only an oral hearing could possibly serve the public interest, as there will necessarily be conflicting evidence presented. [...] the probative value of viva voce evidence, particularly that produced by cross-examination, is substantial". The County also noted that it has plans to widen and potentially relocate Thomson Road, and argued that it would be important for the Board to hear parties' positions on the potential impact of the proposed Transmission Facilities on these plans.

On April 7, 2014, Suncor filed an objection to the request for an oral hearing, submitting that the Board's practice to proceed in writing in this type of proceeding should be maintained. Suncor submitted that concerning the use of the County roads the only possible issue is the location of two road crossings. Concerning the County's plans for Thomson Road, Suncor submitted that its proposed transmission line would run parallel to Thomson Road, on privately owned lands. Suncor also submitted that in the event that the County needed to widen or relocate a portion of Thomson Road in a way that

required lands on which Suncor had constructed its poles and lines, Suncor would move its poles and lines onto private lands.

Suncor submitted that the issues raised by the County do not address the aspects of public interest that are the subject of this proceeding, and that an oral hearing would unnecessarily lengthen the proceeding, causing delay and increased costs.

Board Findings

The Board finds that an oral hearing is not required for this proceeding. Taking into consideration the limited scope of the issues raised by the County in this proceeding, and the particular aspects of these issues that are potentially in dispute, the Board is of the view that a written process will provide an adequate opportunity for the parties to present their cases.

Supplemental Interrogatories by WAIT-PW

Pursuant to Procedural Order No. 1 parties were required to submit interrogatories by April 3, 2014. WAIT-PW submitted interrogatories on April 3, 2014. Suncor requested and received an eight-day extension of time to file its interrogatory responses and filed a response to all interrogatories prior to April 17, 2014 as required.

On April 16, 2014, WAIT-PW filed supplemental interrogatories. Suncor challenged the proposed interrogatories, noting that they were filed beyond the deadline and submitting that some were submissions rather than questions and that others were questions that should be addressed to the IESO or HONI rather than Suncor. Suncor submitted that supplemental interrogatory 1 had already been addressed.

On April 22, 2014, WAIT-PW filed a motion pursuant to Rule 29.3 of the Board's *Rules of Practice and Procedure* requesting that the Board require Suncor to provide answers to its supplemental interrogatories. On April 24, 2014, Suncor submitted that a motion under Rule 29.3 could only be brought following the filing of responses to the additional interrogatories.

On April 24, 2014, WAIT-PW filed a second motion pursuant to Rule 29.3 of the Board's *Rules of Practice and Procedure* requesting that the Board require Suncor to provide complete answers to the supplemental interrogatories of WAIT-PW. On April 29, 2014,

Suncor asked that the Board deny the second motion, arguing that follow-up questions are either outside of the scope of this proceeding, or better suited for the argument phase of the proceeding. A further letter from WAIT-PW was filed with the Board on May 2, 2014 concerning these issues and a response was filed by Suncor on May 5, 2014. On May 7, 2014 WAIT-PW sent a letter to the Board in which it reiterated its request for Suncor to provide full and adequate response to its supplemental interrogatories.

Board Findings

Given the extension of time granted to Suncor to respond to interrogatories, the Board considers that fairness would require it to grant an extension of time to WAIT-PW to file interrogatories, which would encompass the timeframe in which WAIT-PW filed supplementary interrogatories.

However, the Board does not consider it appropriate to order Suncor to respond to WAIT-PW's supplementary interrogatories, or to provide further responses to WAIT-PW's initial interrogatories. Accordingly the WAIT-PW motions are dismissed.

Interrogatories must fall within the scope of the proceeding before the Board. The Board also notes that Rule 26.02 (a) of the Board's *Rules of Practice and Procedure* only contemplates that an applicant would answer interrogatories directed at it.

The first supplemental interrogatory related to the "consideration of the public interest with respect to the construction of the work upon, under or over a highway, utility line or ditch" in making the decision on pole location. The examination of this application pursuant to section 101 of the Act is undertaken for the proposed route as submitted by Suncor. Therefore, evidence concerning the selection of the proposed location rather than an alternative is not within the scope of this proceeding.

Other supplementary interrogatories consist of questions that would require responses by the IESO or HONI. As indicated above, this means that they are not interrogatories properly directed to Suncor. In addition, since neither IESO nor HONI filed evidence in the proceeding it would not be appropriate to require IESO or HONI to provide a response.

Supplemental interrogatories (iv) 1-5 on "the interests of consumers with respect to prices and the reliability and quality of electricity service" are requests that the Board

impose certain requirements on Suncor, rather than questions. Accordingly, they are not the proper subject of interrogatories.

Confidentiality

In response to Board staff interrogatory 3(v), Suncor filed on the public record an interrogatory response labeled as “strictly confidential”. Also, in response to Board staff interrogatory 4(vii) Suncor filed a redacted version of the Connection and Cost Recovery Agreement between Kerwood Wind Inc., Jericho Wind Inc., and Bornish Wind LP and HONI.

In response to Board staff interrogatory 4(v) and the County interrogatory 1(1), Suncor filed a copy of its Shared Transmission Facilities and Option Agreement with Kerwood Wind Inc., Jericho Wind Inc., and Bornish Wind LP., and a copy of its Jericho Shared Transmission Facilities and Option Agreement with Jericho Wind Inc., respectively. In a letter to the Board dated April 17, 2014, Suncor requested that these documents be treated as confidential in their entirety. Suncor submitted that the agreements contain commercial, financial and technical information that if disclosed would cause harm to the competitive positions of the parties in future projects that they may wish to pursue.

Board Findings

The Board requires Suncor to re-file a copy of the letter sent in response to Board staff interrogatories 3 (v) omitting the “strictly confidential” stamp, since confidentiality has not been requested for this letter.

In accordance with the *Practice Direction on Confidential Filings* (the “*Practice Direction*”) the Board would like to hear submissions on Suncor’s request for confidential treatment of the documents filed in response to Board staff interrogatory 4(v) and the County interrogatory 1(1). The Board will treat these two documents as confidential on an interim basis pending making its decision on confidentiality with respect to these two documents. The Board will provide a copy of the confidential documents to any party from whom the Board has accepted an executed Declaration and Undertaking.

The Board’s *Practice Direction* allows counsel, experts or consultants representing parties who wish access to confidential documents filed during a proceeding to file with

the Board a Declaration and Undertaking as set out in section 6 of the Board's *Practice Direction*. As a general rule, such counsel, expert or consultant cannot be a director or employee of a party.

The Board may, in appropriate cases, accept a Declaration and Undertaking from a person who is neither external counsel to, nor a consultant for, a party. If any such person wishes access to the confidential information, the person must file with the Board a request for access to the information and set out the reasons why access should be permitted.

The Board will provide Suncor with an opportunity to object to the acceptance of any Declaration and Undertakings the Board receives, pursuant to section 6.1.4 of the *Practice Direction*.

Where the Board finds a request from a party who is not an external counsel, or a consultant for a party, an appropriately modified version of the form of Declaration and Undertaking provided in Appendix C of the *Practice Direction* will be made available to that person.

The Board considers it necessary to make provision for the following matters related to this proceeding.

THE BOARD ORDERS THAT:

1. On or before **May 20, 2014**, a party wishing to access any of the confidential versions of the documents referred to above shall execute and file with the Board a Declaration and Undertaking in accordance with section 6 of the *Practice Direction*.
2. The Board will notify Suncor no later than **May 23, 2014** of the persons from whom the Board has received a Declaration and Undertaking. Suncor may object to the acceptance of a Declaration and Undertaking by filing the objection with the Board and serving it on the person to whom the objection relates on or before **May 26 2014**. The person to whom the objection relates may reply to the objection on or before **May 30, 2014**.
3. Board staff and intervenors may file any submissions on the treatment of Suncor's

confidential material with the Board and will serve Suncor no later than **June 6, 2014**.

4. Suncor may file a reply submission on the treatment of confidential material and serve it on Board staff and the other parties no later than **June 10, 2014**.
5. Suncor shall file its argument-in-chief, if any, with the Board and deliver to all parties on or before **June 16, 2014**.
6. Intervenors and Board staff shall file any argument with the Board, and copy all parties, on or before **June 20, 2014**.
7. Suncor shall file any reply submission with the Board and copy all parties on or before **July 4, 2014**.

All filings to the Board must quote file number EB-2014-0022, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Leïla Azaïez at leila.azaiez@ontarioenergyboard.ca and Board Counsel, at maureen.helt@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, May 16, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

**APPENDIX 'A' TO
PROCEDURAL ORDER NO. 2**

Amended Applicant and List of Intervenors

Board File No: EB-2014-0022

May 16, 2014

**Suncor Energy Products Inc.
EB-2014-0022**

APPLICANT & LIST OF INTERVENORS

May 16, 2014

APPLICANT

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INTERVENORS

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**Suncor Energy Products Inc.
EB-2014-0022**

APPLICANT & LIST OF INTERVENORS

May 16, 2014

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WAIT-PW

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